IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.772 OF 2007
IN
NOTICE OF MOTION NO.924 OF 2007
IN
L.C.SUIT NO.991 OF 2007

Mahesh Chandrakant Koli (Worlikar)..Appellant
(Orig.Plaintiff)

Versus

The Municipal Corporation of
Greater Bombay ..Respondents
(Orig.Defendants)

Mr.A.M. Sarogi, Advocate for the Appellant
Smt.Geeta Jogalekar Advocate for the BMC

CORAM : S.R.SATHE,J.
DATED : 18/10/2007

P.C. :-

1. Heard both the learned Advocate at length.

2. Appeal heard finally at admission stage.

3. Appellant-original Plaintiff in L.C. Suit No.991 of 2007 has preferred this appeal against the order passed by the Judge, City Civil Court, Bombay in Notice of Motion No.924 of 2007 whereby Plaintiff's application seeking temporary injunction restraining defendant-Municipal Corporation from acting upon and/or implementing the impugned notice under section 354-A of the BMC Act and demolishing the suit premises i.e. house No.111, 111-A, 111-B, Worli Koliwada till the disposal of the suit was dismissed. For the sake of

convenience hereafter the parties shall be referred to as 'Plaintiff' and 'defendant-Corporation'.

4. Brief facts giving rise to this appeal are as under :-

It is the case of the Plaintiff Mahesh Koli that he has inherited the suit property from his ancestors. The suit property is in existence since the year 1955-56. The same is also assessed by the Bombay Municipal Corporation and Plaintiff is paying taxes for the same. On 23/02/2007, Plaintiff found that one Notice under section 354-A of the BMC Act was pasted on the rear side of the suit premises. As the suit property was in existence since the year 1955-56 there was no reason to issue notice under section-354-A. On receipt of the said notice Plaintiff issued notice through Advocate to BMC under Section-527 of the BMC Act and informed the BMC that there was no reason to issue notice to him. Even then on 09/03/2007, Junior Engineer, Sub-engineer and Mukadam from 'G' South Ward came to Plaintiff and threatened that they would demolish the suit premises. According to Plaintiff, Notice under question was not pertaining to Plaintiff's premises. Hence, Plaintiff filed the present suit for declaration that the impugned notice under section 354-

A dated 06/02/2007 is bad in law, void and for permanent injunction restraining defendant-municipal corporation from executing/ implementing the said notice and demolishing the suit premises i.e. house Nos.111, 111-A, 111-B Koliwada, Worli.

5. Plaintiff also filed Notice of Motion and prayed for temporary injunction restraining defendant-corporation from acting upon the suit notice and demolishing the property bearing house Nos.111, 111-A, 111-B Koliwada till the disposal of the suit.

6. Defendant-Corporation filed its reply dated 15/03/2007 and opposed the Notice of Motion. Defendant contended that staff of the defendant-corporation had already demolished the unauthorized construction near house No.113 at Sea site, Worli, Koliwada on 21/02/2007 and this action was taken in pursuance of the complaints received from the residents in that locality and after the inspection of the property. The defendant further contended that they again received complaints regarding re-construction of the said property and defendant's officer again inspected the site on 10/03/2007 and found that structure was re-constructed. The defendant therefore decided to demolish the same.

However, the said work could not be carried out on 12/03/2007 and 14/03/2007 due to non-availability of staff and local police. The defendant, therefore, contended that the structure mentioned in the Notice is unauthorized and Notice of Motion is liable to be dismissed.

7. After hearing the arguments of both the learned Advocates and considering the documents produced on record, learned Trial Judge came to the conclusion that judicial discretion can not be used to protect the unauthorized construction and also Plaintiff has not made out prima facie case and the balance of convenience is also not in his favour. He, therefore, dismissed the Notice of Motion.

8. Being aggrieved by the said order, Plaintiff has filed the present appeal. In this appeal before me, Shri Sarogi, learned Advocate for the Plaintiff has urged 3 points. Firstly, he submitted that the suit structure is in existence since last many years and as such there was no need for the Corporation to issue notice under section-354-A of the BMC Act. According to him, even if it is assumed that on the date of notice the suit structure was in progress still then, having

regard to the fact that at present suit structure is in existence, the effect of Notice under section-354-A of the BMC Act has come to an end and Corporation has to issue notice under section-351 of the BMC Act. Secondly, he canvassed before me that as Plaintiff is in actual occupation of the suit premises, he can not be evicted or structure can not be demolished without following due process of law. Lastly, he submitted that Plaintiff has made out a prima facie case for granting temporary injunction and the balance of convenience is also in Plaintiff's favour. He, therefore, submitted that the appeal be allowed and temporary injunction as prayed by the Plaintiff be granted.

9. As against this, Smt. Jogalekar, learned Advocate for the defendant-corporation submitted that notice under section-354-A was given to the Plaintiff but he failed to stop the work and also did not produce any document to show that the suit structure was authorized. The Corporation, therefore, demolished the structure and Plaintiff again re-constructed it. So, under such circumstances, Plaintiff has in fact suppressed the material fact and when he is not having any legal right in respect of the suit property injunction can not be granted. She also submitted that

the balance of convenience is not in favour of Plaintiff but on the contrary, it is in favour of defendant. If unauthorized structures are allowed to remain then it would create further complications and inconvenience would be caused to the defendants. She, therefore submitted that the appeal be dismissed.

10. Plaintiff is seeking declaration that notice bearing No.ACGS/BF/V/354-A/7734/06-07 dated 06/02/2007 under section 354-A of BMC Act is illegal and by the Notice of Motion, he had prayed that defendant-corporation be restrained from taking action on the basis of the said notice and demolishing structure bearing No.111, 111-A, 111-B Worli, Koliwada. So, in order to succeed in the Notice of Motion the Plaintiff must first show that he has some legal right in respect of the property mentioned in the above cited notice. If we peruse the copy of the said notice, which is on record, we find that the said notice is issued to the owner/occupier of the structure behind House No.113 Worli, Koliwada Road at sea side and it is in respect of the construction or structure with brick masonry walls. So, the said notice is not at all in respect of the House Nos.111, 111-A and 111-B Worli, Koliwada which according to Plaintiff is the property owned by

him. In paragraph No.5 of the plaint, Plaintiff has averred :-

> ***"his property is not 113 and his property is house No.111, 111-A & 111-B, and it is a separate property and there all tenants staying therein and the Plaintiff has nothing to do with the property described in the impugned 354-A notice"***

When such is the position where is question of Plaintiff filing any suit in respect of the above mentioned notice or in respect of the property mentioned in the said notice. If according to Plaintiff, the said notice was pasted on his property then he should have specifically mentioned that the property mentioned in the said notice is his property and as such, he has filed the present suit but he has not done so. When Plaintiff is not at all any way concerned with the property mentioned in the notice in question, it can not be said that Plaintiff is having any legal right in respect of the said property and that the said legal right is being infringed by the defendant-corporation. So, it can not be said that Plaintiff has made out any prima facie case to show that he has got any right to take action in respect of the notice cited above.

11. From the affidavit filed by an employee of the defendant-corporation, it does appear that residents in

the locality of house No.113, sea side had made complaint about some unauthorized construction that was being carried out behind house No.113 Koliwada and the Corporation had issued notice under section 354-A of the BMC Act to the occupant/owner of the said property. Not only that but from the affidavit of the said employee as well as photographs produced on record it is very clear that the Corporation had in fact demolished the structure as the owner/occupier of the said structure did not stop the work and also failed to produce any document before Corporation to show that the structure is legal and authorized. However, it seems that thereafter owner/occupier or somebody has again reconstructed the structure which was demolished. It appears that taking undue advantage of this position, it is now tried to be argued on behalf of the Plaintiff that structure is complete and in existence and as such it can not be demolished unless notice under section 351 of the BMC Act is issued and hence, it is necessary to grant temporary injunction as prayed.

12. Firstly, I am not at all inclined to hold that Plaintiff has shown that he is having any legal right in respect of the suit structure. The Plaintiff has

produced on record certain receipts issued by the defendant Corporation which show that one Bhavani Mangu has paid corporation taxes in respect of the property bearing No.111-A. It must be noted that the said receipt is of 1955-56. There is absolutely nothing on record to show that the said Bhavani Mangu was the predecessor of the present Plaintiff. If Plaintiff had received the property by succession through Bhavani Mangu then normally Plaintiff would have got his name entered to the said property but we find that Plaintiff has not produced any such receipt of the said property which stand in his name. So, this also in fact indicates that Plaintiff has no locus standi to file any suit in respect of the property mentioned in the notice issued by the Corporation.

13. If we assume for the sake of argument that the structure in respect of which BMC issued notice is the property of the Plaintiff then it must also be held that this very property was rightly demolished by the defendant-corporation while taking action in pursuance of the notice issued under section 354-A of the BMC Act. Even then structure which was demolished was again reconstructed. If this has happened in respect of the Plaintiff's property then it must also be noted that

Plaintiff has suppressed this material fact from the Court. The conduct of the Plaintiff also indicates that he has carried out unauthorized illegal construction. He has not come to the Court with clean hands. So, naturally, no equitable relief can be granted in favour of such person. If temporary injunction is granted in favour of such person then it would in fact amount to allowing the Plaintiff to abuse the process of law and to perpetuate the illegal unauthorized act. So, looking to the case from any angle, it is very clear that Plaintiff's suit is totally misconceived. He has failed to show even prima facie that the notice issued by BMC was in respect of his property and his rights are likely to be infringed by the defendant. So, under such circumstances, it can not be said that the balance of convenience is in favour of Plaintiff. On the contrary, if such unauthorized permission is allowed to remain it would amount to putting premium on Plaintiff's wrong. Under the circumstances, I am of view that there is no need to interfere with the order passed by the learned Trial Judge in the present appeal. Hence, I pass the following order :-

O R D E R

Appeal is dismissed with costs.

At this stage, learned Advocate for the

Appellant-Plaintiff submitted that Plaintiff intends to challenge the above order in the Apex Court and as such operation of the order be stayed and the status-quo order granted earlier be continued for further period of 4 weeks.

Hence, with a view to give opportunity to Plaintiff to approach the Higher Court, status-quo granted earlier is to continue for further period of 3 weeks from today.

(S.R.SATHE,J.)